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To: USPTO

Attention: Examiner Leon Lankford &
Supervisory Patent Examiner Michael Wityshyn
From: Doyle A. Siever

Date: April 30, 2008

Re: Appl. No. 09/960,244; Filed 09/21/01
For: Cell Populations Which Co-Express
CD49c and CD90
Inventors: HO *et al.*

Pages (including cover sheet): 3

Fax No: 571-273-8300

Our Reference: 2560.0020000/JAG/D-S

Message

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MEMORANDUM

TO: Examiner Leon Lankford

FROM: Doyle Siever *DS*

DATE: April 30, 2008

RE: Proposed Product-By-Process Claim for:
U.S. Patent Application
Appl. No. 09/960,244; Filed: September 21, 2001
For: **Cell Populations Which Co-Express CD49c and CD90**
Inventors: HO *et al.*
Our Ref: 2560.0020000/JAG/D-S

ART UNIT: 1651

Proposed Product-By-Process Claim:

Applicants submit herein a proposed product-by-process claim for the Examiner's consideration. This claim is submitted in view of the April 3, 2008 interview between representatives for the Applicants (Jorge Goldstein, Esq. and Doyle Siever, Esq.) and Examiner Leon Lankford. At this interview, the Examiner agreed to consider the allowability of a product-by-process claim in the above-referenced patent application.

The claim proposed herein is not currently being submitted as a Supplemental Amendment to the currently pending claims. Instead, Applicants respectfully request comment from the Examiner regarding whether or not the Examiner would allow a product-by-process claim such as this, if it was submitted in a Supplemental Amendment.

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Proposed Claim:

97. An isolated cell population obtainable from human bone marrow by steps that comprise:

- a) incubating human bone marrow cells under a low oxygen condition such that said cells when allowed to adhere to a tissue culture-treated surface will produce adherent colony forming units (CFU); and,
- b) passaging cells in said adherent CFU at a seeding density of less than about 2500 cells/cm²,

wherein greater than about 91% of said passaged cells co-express CD49c and CD90, and wherein said passaged cells maintain a population doubling rate of less than about 30 hours after 30 cell doublings.

Support for this claim can be found throughout the application as filed. For example, support can be found in the specification at: page 12, lines 4-5; page 14, lines 16-23; and, page 25, line 9 to page 30, line 2.

Applicants kindly request that the Examiner contact applicants representative, Doyle Siever, Esq., (Office: 202-772-8867; Email: DSiever@SKGF.com; Fax: 202-371-2540), with respect to allowability of this claim, or any comments which may further assist in reaching an agreement with respect to allowable claims.

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